

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

MYLOCKER.COM LLC d/b/a
CustomCat,

Plaintiff,

v.

PRINTFUL, INC.,

Defendant.

Case No. 21-

Hon.

Magistrate Judge

BODMAN PLC
By: J. Adam Behrendt (P58607)
Melissa Benton Moore (P73018)
201 W. Big Beaver, Suite 500
Troy, MI 48084
(248) 743-6000
jbehrendt@bodmanlaw.com
mmoore@bodmanlaw.com
Attorneys for Plaintiff

COMPLAINT

Plaintiff MYLOCKER.COM LLC d/b/a CustomCat (“Plaintiff” or “CustomCat”), for its Complaint against Defendant Printful, Inc. (“Defendant” or “Printful”), hereby states and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff CustomCat seeks monetary damages and injunctive relief against Defendant Printful arising out of Defendant’s false advertising in violation of Section 43 of the Trademark Act of 1946, 15 U.S.C. § 1125 (the “Lanham Act”); unfair and deceptive practices in conduct of trade or commerce in violation of the

Michigan Consumer Protection Act (the “MCPA”), MCL § 445.903; and false advertising, injurious falsehoods, and business defamation under the common law of Michigan.

JURISDICTION AND VENUE

2. The Court has jurisdiction over Plaintiff’s federal claims pursuant to 28 U.S.C. §§ 1331 and 1338.

3. The Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(a) because the state law claims asserted hereunder are so closely related to the federal claims brought in this action as to form part of the same case or controversy.

4. This Court also has jurisdiction over this action under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 exclusive of interest, costs, and attorney fees.

5. The Court has personal jurisdiction over Defendant because Defendant intentionally targeted Plaintiff, a known resident of Michigan, with its conduct described herein, knowing that the harm was likely to be suffered in Michigan.

6. Venue for this action is proper pursuant to 28 U.S.C. § 1391(b)(2) and (3) because a substantial part of the events giving rise to the claims occurred in this District and Defendant is subject to personal jurisdiction in this district.

PARTIES

7. Plaintiff MyLocker d/b/a CustomCat is a Michigan limited liability

company that maintains its principal place of business in Detroit, Michigan. The members of MyLocker are Robert Hake, Inc. and The Bittker Group, LLC. Robert Hake, Inc. is a Michigan corporation that maintains its principal place of business in Michigan. The Bittker Group, LLC is a Michigan limited liability company that maintains its principal place of business in Michigan. The members of The Bittker Group, LLC are Alan Bittker and Sandy Bittker, both of whom reside in Michigan.

8. Defendant Printful is a Delaware Corporation that maintains its principal place of business at 11025 Westlake Dr., Charlotte, North Carolina 28273.

GENERAL ALLEGATIONS

9. This Complaint arises out of Defendant's false advertising and other false and deceptive statements by Defendant and its affiliates, designed to divert actual and potential sales and customers from Plaintiff to Defendant.

10. MyLocker is a manufacturer and online retailer of customized clothing and other logo merchandise such as blankets, hats, bags, and facemasks. As a "print on demand" ("POD") fulfillment company, MyLocker allows its customers to design and customize their products on its website to suit their individual needs and to create their own stores to sell these products. After a customer designs its customized products, the order is processed through MyLocker's production facility where the items are created, packaged, and eventually shipped to customers. CustomCat is a division of MyLocker that also provides POD services.

11. Since its founding in 2006, CustomCat has achieved this success and

ability to attract and retain customers due to its high quality products, hundreds of customizable products and design options, fast fulfillment time (with an average fulfillment time of 3 days or less), low prices (which allow it to pass along high profit margins to its customers), excellent customer support services, and its product personalization tool, among other things.

12. Printful also is a POD company that allows its customers to create and sell custom products online. Printful is one of CustomCat's direct competitors.

13. Printful has a history of publishing, soliciting, and promoting false, misleading, and defamatory statements about CustomCat's products and services with the goal of diverting business away from CustomCat to Printful.

14. For example, Printful has solicited and rewarded its affiliates for publishing misleading, deceptive, and defaming reviews concerning CustomCat. These reviews have contained misrepresentations about, among other things, CustomCat's products, pricing, and payment options, and are intended to damage CustomCat by diverting sales and customers away from CustomCat toward Printful.

15. Printful has an affiliate program through which it pays affiliates a commission of 10% of every Printful order placed by customers they refer.¹

¹ *Affiliate program*, PRINTFUL, <https://www.printful.com/affiliates>; *Printful Affiliate Marketing Lessons*, <https://www.printful.com/affiliate-lessons>.

16. Through this program, Printful encourages its affiliates to advertise Printful in a variety of ways including, among others, “[w]rit[ing] a blog post” that includes “a comparison with other dropshipping or printing services,” sharing ads on social media,² or “publish[ing] videos reviewing their experience with Printful” on YouTube.³

17. In a September 25, 2021 review titled *CustomCat vs. Printful – Best Site to Sell T-Shirt Designs?*, the author purported to compare both companies before ultimately recommending his readers use Printful instead of CustomCat.⁴ This review contains several false and misleading statements. First, it states that “Unlike Printful, CustomCat does not support credit card and debit card.” Further, it states that “Printful accepts payments through PayPal, credit card or debit cards. On the other hand, CustomCat allows your customers to make payments using either Payoneer or PayPal.” These statements are false, as Customcat supports and takes payments from credit and debit cards. Further, it states that “Printful also offers you the ability to use their platform without any extra monthly fees. CustomCat charges a bit more for people who are not paying \$30 per month for their service.” This is false, as CustomCat offers a free version that is much less expensive than Printful.

² Nora Inveiss, *How to Promote Your Printful Affiliate Link*, PRINTFUL, <https://www.printful.com/blog/how-to-promote-your-printful-affiliate-link>.

³ *Affiliate program*, PRINTFUL, <https://www.printful.com/affiliates>.

⁴ Tom Clayton, *CustomCat vs. Printful – Best Site to Sell T-Shirt Designs?* RIGOROUS THEMES (Sept. 25, 2021), <https://rigorousthemes.com/blog/customcat-vs-printful/>.

18. Similarly, in an August 9, 2021 review titled *Customcat vs Printful [2021]: Which Print on Demand Site is Best?*, the reviewer purported to review both companies and concluded that his readers should “start[] with Printful” rather than CustomCat.⁵ This review contains several false and misleading statements. For instance, it states that one of the “[m]ain [d]ifferences” between CustomCat and Printful is that “CustomCat has a paid plan, whereas Printful has no monthly fees.” This is false and misleading, as CustomCat offers a free plan with no monthly fees. It further states that “CustomCat’s items are slightly lower in cost, whereas Printful’s items cost a little more.” This is misleading and vastly understates the difference in the company’s prices. CustomCat’s prices were at the time of this review, and continue to be, significantly—not slightly—lower than Printful’s. It further states that “Printful offers a bigger range [of products] with more variations” than CustomCat. This is false. CustomCat offers as many products and variations as Printful. Finally, it states that “Printful requires a lower up front dollar commitment” and “more customizable product options.” This is false, as CustomCat actually requires a lower up front dollar commitment and a similar number of product options as Printful.

⁵ DMEditor, *Customcat vs Printful [2021]: Which Print on Demand Site is Best?* THE DIGITAL MERCHANT (Aug. 9, 2021), <https://thedigitalmerchant.com/ecommerce/print-on-demand/customcat-vs-printful/>.

19. On information and belief, these reviews were created and published by members of the Printful Affiliate Program. These affiliates had a financial incentive to make false and misleading statements to influence their audience to use Printful's services rather than those of CustomCat.

20. Printful has known that its affiliate reviews sometimes contain false and misleading statements about CustomCat since at least July 13, 2020, when CustomCat sent Printful a cease and desist letter regarding false and misleading affiliate reviews.

21. Printful's history of condoning and rewarding affiliates for these false reviews makes its recent false statements about CustomCat, described below, particularly egregious.

False and Misleading Statements on Printful's Website

22. Currently published on Printful's website is a chart that purports to compare various aspects of Printful's business against those of its competitors, including CustomCat, in an effort to drive business away from these competitors and toward Printful. *See* Exhibit A.

23. Printful makes several false and misleading statements about CustomCat in this chart.

24. For example, Printful claims that, unlike Printful, CustomCat does not offer “cut & sew” production services. This is false. CustomCat offers in-house cut and sew services for its leggings and pillow products.

25. Printful also claims that, unlike Printful, CustomCat does not offer customers the ability to live chat with customer support. This is false. CustomCat offers customers the ability to live chat with customer support via Facebook messenger.

26. Additionally, Printful claims that, unlike Printful, CustomCat does not offer a product personalization tool for designing products. Again, this is false. CustomCat began offering product personalization through a native text personalization feature that integrates with Shopify in 2016—a year before Printful started using the feature—making CustomCat the first POD company to use product personalization.

27. Further, Printful makes false claims about CustomCat’s prices relative to those of Printful. Printful claims that the most affordable black t-shirt available for purchase from CustomCat costs \$9.00, whereas the comparable product from Printful costs \$7.95. This is false and misleading. Although its pricing is dependent on many factors, the most affordable t-shirt currently available for purchase from CustomCat costs \$7.00. In addition to its false claim about CustomCat’s prices, Printful’s claim is misleading because the t-shirts it purports to compare in this chart

are simply not comparable: Printful's t-shirt comes in three color options, while CustomCat's comes in more than ten color options.

28. Printful also claims that, unlike Printful, CustomCat does not offer sellers who use its services the option to use custom return addresses. This is false. CustomCat does, and always has, offered custom return addresses to its sellers.

29. Finally, Printful claims that, unlike Printful, CustomCat does not offer fulfillment services 24 hours per day. Yet again, this is false, as CustomCat operates and provides fulfillment services 24 hours per day.

30. These false statements deceive and mislead consumers and have damaged and continue to damage CustomCat by defaming CustomCat's products and services, diverting current and potential sales and customers away from CustomCat and to Printful, and harming CustomCat's reputation and goodwill.

False and Misleading Reviews by Printful

31. On information and belief, Printful also has a practice of soliciting and manipulating false and misleading positive reviews with the goal of inflating its brand rating, number of downloads, and reputation relative to its competitors, including CustomCat.

32. By way of example, on information and belief, Printful incentivizes or pays for positive reviews of its products and services on third-party websites, such

as Shopify. It does so because a company's rating determines its ranking in the Shopify App Store.

33. On Shopify, customers are able to provide reviews of companies including Printful and its competitors. The reviews include a rating out of five stars as well as a text box in which a customer can write a substantive review. Once a review is posted, other customers are able to click on a button to indicate that a particular review was “helpful.” The number of people who have indicated that a review was helpful then appears next to that review, and customers are given the option to sort reviews by how “helpful” they are.

34. Currently on Shopify, there are reviews of Printful which purport to award Printful five stars but are accompanied by nonsensical, and clearly unhelpful, descriptions.

35. For example, one review, which was submitted on July 9, 2020, awards Printful five stars and reads:

pubfex

Rating



Posted

July 9, 2020

dshfhdnvnvfnbfbhubnsnb

Sbsjfjfbnbfjsbjbijfidbdhfertyuikjbvsdfghjkjhgfdsfghgfsertgdrthvdhbvdhbvfhbvghbvfnbvfgbhf
dsasdfghjklloiutrewqzxcvbnmlkjhgfdsaqwertyuioplkjhgfdsssssssssssssaaaaaaaaccc
ccccgggxnjdtu jdtuk mtdxi



Three people voted that this review was helpful. *See Exhibit B.*

36. Another review, which was submitted on December 13, 2020, awards Printful five stars and reads:

Born Again Textiles

Rating Last edited
★★★★★ December 13, 2020

It's great integration, and good service too. I just blabla blabla bla bla . It's blessed! Be joyful and praise the Lord too! :) Hallelujah. Why does it still keep popping up?

 Helpful (1)

One person voted that this review was helpful. *See Exhibit C.*

37. Another review, which was submitted on June 20, 2020, awards Printful five stars and reads:

Dualarity

Rating Posted
★★★★★ June 20, 2020

Fireo;ulkgj,nk.lk/;L"lp]
o[\i'uy;iltukyfdtgcmb,nb.,/LK:"Pi\[oy;ltikrudjhfcmbnvb ./lK"piu9y8ot7irutdjyshfxnbv,J:O'pu

 Helpful (1)

One person voted that this review was helpful. *See Exhibit D.*

38. On information and belief, Printful paid for or gave incentives in exchange for these reviews in order to boost its rating and consequently its ranking in the Shopify App Store.

39. Printful's actions violate the Shopify App's policies, which state in relevant part: "Without limiting the restrictions outlined elsewhere in this Agreement or in the Shopify API Terms, Developers will not: Solicit or permit reviews that are fake, inaccurate, irrelevant, misleading, being used improperly for commercial gain, posted in exchange for a financial or other gain, posted multiple times (whether from the same or more than one account), misleading as to the reviewer's identity or their connection to the Application or Theme being reviewed, or reviews that contain or link to prohibited or illegal content. Reviews on the Shopify App Store and Shopify Theme Store are meant to be unbiased, useful and trustworthy. Shopify reserves the right to take any action it deems necessary in respect of a Partner engaged in any of this behaviour, including the right (but not the obligation) to remove or edit reviews."⁶

40. On information and belief, Printful's actions have misled and continue to mislead consumers into believing that Printful's rating is higher than it would be without these fake reviews.

41. On information and belief, these false and misleading statements have improperly diverted consumers to Printful away from its competitors, including CustomCat.

⁶ *Partner Program Agreement*, SHOPIFY, https://www.shopify.com/partners/terms?itcat=partner_blog&itterm=get_reviews_for_your_shopify_apps

42. Further, on information and belief, Printful has employed a misleading and improper practice in which it misleadingly boosts positive reviews of Printful.

43. This scheme is evidenced by the fact that certain Printful reviews, including those discussed in paragraphs 35-37, plainly are not helpful to consumers yet have been indicated to be “helpful.”

44. On information and belief, Printful directed its employees or agents to vote for 5-star reviews as helpful in order to improperly and deceptively mislead consumers into giving more weight to these reviews because they think real Printful customers agreed with them.

45. On information and belief, Printful’s actions have misled and continue to mislead consumers into believing that customers read these 5-star reviews and found them helpful in making purchasing decisions, when in fact real customers did not indicate that these reviews were helpful.

46. On information and belief, these false and misleading statements have improperly diverted consumers to Printful away from its competitors, including CustomCat.

COUNT I
False Advertising under the Lanham Act, 15 U.S.C. § 1125(a)(1)(B)

47. Plaintiff realleges and incorporates all above paragraphs as if fully set forth herein.

48. Defendant's false and misleading statements about Plaintiff constitute false and misleading advertising under the Lanham Act in violation of 15 U.S.C. § 1125(a)(1)(B) in that they misrepresent the characteristics and qualities of Plaintiff's goods and services.

49. Defendant's false and misleading statements constitute false and misleading statements of fact which have deceived or have the capacity to deceive customers.

50. Defendant's false and misleading statements are material to consumers, who select between competing services based on, in material part, prices, customer service, ease of use, quality of and options regarding goods, design, production, fulfillment times, and ratings and reviews from other users.

51. On information and belief, Defendant's false and misleading statements were made in, and have a substantial impact on, interstate commerce.

52. On information and belief, Defendant's false and misleading statements have caused competitive injury to Plaintiff through the diversion of sales and customers from Plaintiff to Defendant and harm to Plaintiff's business reputation and goodwill.

53. On information and belief, as a proximate result of Defendant's false and misleading statements, Plaintiff has suffered damages in an amount to be proved at trial.

54. Additionally, Defendant's conduct has caused Plaintiff to suffer, and will continue to cause Plaintiff to suffer, immediate and irreparable injury not compensable by money damages, thereby entitling Plaintiff to injunctive relief.

55. Defendant's conduct constitutes deliberate and intentional violations of 15 U.S.C. § 1125(a) such that is an exceptional case under the Lanham Act entitling Plaintiff to attorneys' fees and costs.

COUNT II
False Advertising under Michigan Law

56. Plaintiff realleges and incorporates all above paragraphs as if fully set forth herein.

57. Defendant's false and misleading statements constitute false advertising under Michigan common law.

58. Defendant's false and misleading statements misrepresent the characteristics and qualities of Plaintiff's goods and services.

59. Defendant's false and misleading statements have deceived or have the capacity to deceive customers.

60. Defendant's false and misleading statements are material to consumers, who select between competing services based on, in material part, prices, customer service, ease of use, quality of and options regarding goods, design, production, fulfillment times, and ratings and reviews from other users.

61. On information and belief, Defendant's false and misleading statements were made in, and have a substantial impact on, interstate commerce.

62. On information and belief, Defendant's false and misleading statements have caused competitive injury to Plaintiff through the diversion of sales and customers from Plaintiff to Defendant and harm to Plaintiff's business reputation and goodwill.

63. On information and belief, as a proximate result of Defendant's false and misleading statements, Plaintiff has suffered damages in an amount to be proved at trial.

COUNT III

Violation of the Michigan Consumer Protection Act, MCL § 445.903

64. Plaintiff realleges and incorporates all above paragraphs as if fully set forth herein.

65. Defendant's false and misleading statements constitute unfair, unconscionable, or deceptive methods, acts, or practices in conduct of trade or commerce in violation of the Michigan Consumer Protection Act, MCL § 445.903.

66. Defendant's false and misleading statements have disparaged, and continue to disparage, Plaintiff's goods, services, and business by conveying false negative information about Plaintiff's prices, products, production and design, customer service, fulfillment, user ratings and reviews relative to Defendant, and more.

67. On information and belief, as a proximate result of Defendant's false and misleading statements, Plaintiff has suffered damages in an amount to be proved at trial due to the diversion of sales and customers from Plaintiff to Defendant and injury to Plaintiff's business reputation and goodwill.

COUNT IV
Injurious Falsehood under Michigan Law

68. Plaintiff realleges and incorporates all above paragraphs as if fully set forth herein.

69. Defendant's false and misleading statements about Plaintiff constitute injurious falsehoods under Michigan common law in that they are false statements about the nature and quality of Plaintiff's goods and services, published on Defendant's website and other third-party websites.

70. On information and belief, Defendant knew these statements were false or acted with reckless disregard for their truth or falsity.

71. Defendant knew or should have known that the publication of these false and misleading statements would likely result in pecuniary loss or in harm to interests of the Plaintiff having a pecuniary value, because these statements were likely to divert sales and customers from Plaintiff to Defendant and cause injury to Plaintiff's business reputation and goodwill.

72. On information and belief, Plaintiff has suffered money damages in an amount to be proved at trial because Defendant's false statements have diverted and

will likely continue to divert sales and customers from Plaintiff to Defendant and cause injury to Plaintiff's business reputation and goodwill.

COUNT V
Business Defamation under Michigan Law

73. Plaintiff realleges and incorporates all above paragraphs as if fully set forth herein.

74. Defendant's false and misleading statements about Plaintiff constitute business defamation in that they constitute false and defamatory statements concerning Plaintiff.

75. Defendant's false and misleading statements about Plaintiff were unprivileged and made to third parties.

76. Defendants made and published these statements either knowingly, or at least negligently, because they knew or should have known they were false and misleading.

77. On information and belief, this has and will likely cause injury to Plaintiff in the form of money damages due to this diversion of sales and customers and injury to Plaintiff's business reputation and goodwill.

RELIEF REQUESTED

Plaintiff respectfully requests that the Court enter judgment in its favor against Defendant, and that the Court:

A. Enter a preliminary and permanent injunction, pursuant to 15 U.S.C. § 1125(a):

- i. Requiring Defendant and its affiliates, agents, employees, contractors, representatives, and/or all other persons acting in concert or participation with Defendant, to remove false or misleading statements about Plaintiff from Defendant's website and all other platforms on which they appear;
- ii. Prohibiting Defendant and all of its affiliates, agents, employees, contractors, representatives, and/or all other persons acting in concert or participation with Defendant, from: (a) making or promoting false or misleading statements about Plaintiff on their website or any other platform; (b) soliciting others to make false or misleading statements about Plaintiff; and (c) engaging in any other act in derogation of Plaintiff's rights.

B. Enter an order, pursuant to 15 U.S.C. § 1117(a), MCL § 445.903, and Michigan common law, awarding Plaintiff: (a) Plaintiff's actual damages to be proven at trial; (b) Defendant's profits, (c) Plaintiff's reasonable attorneys' fees and costs of this action; (d) compensatory and punitive damages; (e) pre- and post-judgment interest; and (f) such other and further relief as the Court may deem just and proper.

Dated: December 8, 2021

Respectfully Submitted,

BODMAN PLC

By: /s/ J. Adam Behrendt

J. Adam Behrendt (P58607)

Melissa Benton Moore (P73018)

201 W. Big Beaver Road, Suite 500

Troy, MI 48084

Tel: (248) 743-6000

abehrendt@bodmanlaw.com

mmoore@bodmanlaw.com

Attorneys for Plaintiff